UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

AMERICAN MEDICAL RESPONSE OF CONNECTICUT, INC.	
and	**Case 34-CA-013051**
ADAM CUMMINGS, AN INDIVIDUAL	
AMERICAN MEDICAL RESPONSE OF CONNECTICUT, INC.	
and	**Case 34-CA-065800**
SHANNON SMITH, AN INDIVIDUAL	**MAY 16, 2012**

RESPONDENT'S REPLY TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S REQUEST FOR SPECIAL PERMISSION TO APPEAL

The respondent, American Medical Response of Connecticut, Inc. ("AMR"), hereby submits its Reply To Counsel For The Acting General Counsel's Opposition To Respondent's Request For Special Permission To Appeal. In her Opposition, Counsel for the Acting General Counsel incorrectly states that AMR first sought deferral of Case 34-CA-013051 ("the Cummings Complaint") on May 3, 2012 when filing its Motion to Defer with Administrative Law Judge Raymond P. Green ("ALJ Green"). (Opp'n fn 1.) In fact, nearly three weeks prior to the start of the hearing on the Cummings Complaint, AMR and Counsel for the Acting General Counsel had a telephone conversation during which AMR specifically requested deferral of the Cummings Complaint and said request was discussed at length. (See letter date April 13, 2012, attached hereto as Exhibit A.) Shortly thereafter, AMR wrote to Counsel for the Acting General Counsel memorializing

the conversation and again requested "that the Region defer charge 34-CA-013051 to the parties' contractual grievance and arbitration process." (Id.) Accordingly, for these reasons, and for the reasons set forth in AMR's Motion to Defer, AMR's Request for Special Permission to Appeal should be granted and the Board should overturn ALJ Green's Denial of AMR's Motion to Defer.

AMERICAN MEDICAL RESPONSE OF OF CONNECTICUT, INC.

By: Meredith Diette

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Respondent's Reply To Counsel For The Acting General Counsel's Opposition To Respondent's Request For Special Permission To Appeal has been served by mail and email this 16th day of May, 2012, to the following:

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AMERICAN MEDICAL RESPONSE

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April 13, 2012

Via e-mail to Jennifer.Dease@nlrb.gov
Jennifer Dease, Esq.
National Labor Relations Board—Region 34

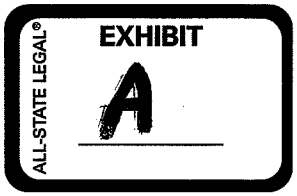
Re: 34-CA-013051 (Adam Cummings/American Medical Response of Connecticut, Inc.)

Dear Ms. Dease:

I am writing to follow up on our telephone conversation earlier this week regarding the above-referenced matter. You stated that the Region does not believe this matter should be deferred under the *Collyer* doctrine, because of two purported procedural barriers: (a) the "Arbitration/Litigation Waiver" provision set forth in Section 22.03 of the applicable CBA; and (b) Section 16.05 of the applicable CBA states that no economic award may be retroactive for more than 30 days prior to the filing of the grievance to arbitration.

As you know, the Employer has already affirmatively asserted in its Amended Answer that it "remains willing to waive any procedural barriers to arbitration of said dispute" (emphasis added). To the extent there is any confusion on the Region's part, please allow this letter to confirm that the Employer's willingness to waive any procedural barriers to arbitration includes the two items set forth in the preceding paragraph. In other words, the Employer affirmatively waives any right it may have otherwise had to invoke Section 22.03 of the CBA as a defense to arbitrability of the disputes raised in the charge (and in the pending grievance filed by the Union on Mr. Cummings' behalf). The Employer also affirmatively waives the backpay limitation set forth in Section 16.05 of the CBA and thus authorizes the Arbitrator to award a "make-whole" remedy if he deems it appropriate.

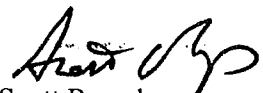
Given that any alleged conflict of interest between Mr. Cummings and the Union has been eliminated, I believe this matter now falls squarely within the *Collyer* doctrine. Indeed, I believe it would be contrary to the basic principles of the Act for the Region to refuse to defer the charge to the parties' grievance and arbitration process, as it is well-settled that "where an employer and a union have voluntarily elected to create dispute resolution machinery . . . , it is contrary to the basic principles of the Act for the Board to jump into the fray prior to an honest attempt by the parties to resolve their disputes



through that machinery." *Hammontree v. NLRB*, 925 F.2d 1486, 1490-91 (D.C. Cir. 1991), *citing United Technologies Corp.*, 268 N.L.R.B. 557, 559 (1987). As Judge Edwards explained in his concurring opinion in *Hammontree*: "Congress expressed a strong preference for the use of private remedies . . . the Board is charged with fostering the overall well-being of labor-management relations, which may be best accomplished by requiring the parties to seek to resolve their disputes through contractual dispute resolution mechanisms." *Id.* at 1501-02.

I believe there is no principled basis for declining to require that the parties seek to resolve this dispute via their agreed upon grievance and arbitration process – a procedure that the parties have successfully utilized for many prior disputes arising under the applicable CBA. As you know, the Union filed a timely grievance challenging Mr. Cummings' termination and pursued the grievance to arbitration, and the parties even agreed on an arbitration hearing date of February 13, 2012 – a date that was postponed only because the Arbitrator granted the Union's request in early February for a postponement, over the Employer's strong objections. The Employer remains ready and willing to arbitrate the disputes raised in the grievance and the charge on the first mutually agreeable date that the Arbitrator has available, and I again respectfully request that the Region defer charge 34-CA-013051 to the parties' contractual grievance and arbitration process.

Sincerely,



Scott Rowekamp
Labor & Employment Counsel